

CHAPTER 6

ORAL ARGUMENT

Oral argument is an opportunity for one or both of the parties to appear before the Court of Appeal and argue the merits of their case. At oral argument, each party has the opportunity to clarify the points made in their brief, reemphasize what they think is most important about their arguments, and answer questions from the panel of three justices who ultimately decide the case. Oral argument is not a time to restate the facts of the case or repeat parts of the brief. The justices know what you said in your brief. They frown on arguments that merely repeat what they read in the briefs. Oral argument is the time to make sure that the Court understands the key issues of the case.

Requesting oral argument

Once the briefing process is complete, the Court begins reading the briefs and considering the issues on appeal. When the Court feels that it understands those issues, it sets a case for oral argument. The court writes the parties to notify them that their case has been placed on an oral argument calendar for a specific date and asks the parties if they wish to argue the case orally. On this calendar notice, some divisions in the Second District may ask for an initial estimate of the time you need for argument. (CRC rule 8.256(b).) Others wait until you are in the courtroom to ask for your time estimate. You should let the court know right away if you cannot attend court on the assigned date. In order to formally request oral argument, you must return this calendar notice promptly to the Court of Appeal by mail or in person. Some Divisions in the Second District require Proof of Service ([Sample Form C](#)) on the other parties in the case when you return the calendar notice. Read the notice carefully to determine if you must serve the calendar notice, indicating whether you want oral argument.

Preparing for oral argument

The best way to prepare for oral argument is to review your case as thoroughly as possible. You should look at the record again and the arguments in the briefs so that you are very familiar with your case in the event one or more of the justices asks you questions about the facts or the legal argument. Make an outline of the points you wish to emphasize and the responses you would make to

possible questions the court might raise or arguments that opposing counsel might raise. Review your opponents brief and prepare responses to the points in their argument that are the strongest. You should not prepare a written statement to read because the justices may interrupt you with questions. Be prepared to be flexible.

You need to review all of the items you have cited in your brief to make sure nothing has been overruled by the California Supreme Court and that there are no new court decisions or new statutes that might affect your case. If you do have new authority, you should let the court and opposing counsel know what it is in writing before the argument. This is most important if you intend to mention the new material in your oral argument. If you learn of the new case or other authority well in advance of oral argument, you may wish to ask the court for leave so that you and opposing counsel can file supplemental letter briefs concerning the new authorities before the matter is heard. You may make such a request with an informal letter to the court as long as you send a copy to opposing counsel.

If at all possible you should take the time to come to the court and observe at least some oral argument, a month or two before your argument date. Oral argument is held most weekdays. You can check the oral argument calendar online at Microsoft Word or Adobe Acrobat. If you cannot access the internet or need more information, you should call the clerk's office to confirm the date you wish to come since you may have selected a morning or afternoon when no calendar is scheduled. Argument is open to the public so you don't need special permission to attend.

Oral argument

Argument is held before a panel of three justices. Oral argument in Divisions 1-5 or 7-8 is held at the Court of Appeal, 300 South Spring Street, Los Angeles. The courtroom is located on the third floor. Oral argument before Division 6 is held at 200 East Santa Clara Street, Ventura. When you arrive for oral argument you will go through security, enter the courtroom, and check in with the court clerk, giving your name and a time estimate. The maximum time for argument in the Court of Appeal is 30 minutes for each side (CRC rule 8.256(c)(2), although in complex cases it may be longer.

Once in the courtroom, sit in the audience until your case is called. When the justices enter the courtroom all persons rise. The presiding justice or the most senior justice sits in the middle and calls the calendar. Generally, but not always, the cases are heard in order with the cases taking the shortest time going first.

The Second District sits on the bench in Divisions that are comprised of four justices. Of the four, however, only three sit on the panel for any one case. Those

three justices write the opinion that decides the outcome of the appeal. The names of the three justices on the panel for your case are available in the printed court calendar that is distributed at the Court on the day of oral argument. You can see the names of all the justices on nameplates that sit on the front of the bench.

When your case is called, walk to the podium area. The appellant sits at the table to the left of the podium and the respondent sits at the table to the right of the podium. The appellant argues first. If you are the appellant and wish to save part of your argument time to answer the respondent's argument, tell the justices that before you start your argument and tell them how long you want for that purpose. Be aware the justices generally will stop you when you have used up the time you told them you wanted for argument. When that occurs you should do no more than complete the sentence you are speaking. If you are the appellant and have requested time for rebuttal you are limited in the rebuttal to talking about only those arguments that the respondent has used. You may not present any new arguments at that time.

Often counsel will begin with the words "may it please the court." Whether you start with that or not, you should identify yourself saying that you are self-represented. By the time of oral argument, the three justices on the panel who hear your case are familiar with the facts of your case, the arguments you have raised and the law involved. Thus, there is no need for you to repeat anything that you have already told the court in your briefs. If you do not have anything to present other than what is in your briefs you should seriously consider not presenting any oral argument.

If, however, you have decided to argue orally, you should proceed in a conversational tone, limit your comments to things which happened during the trial that you believe were in error and are part of your appeal. You may not bring up any brand new argument or fact that was not included in the record or in your brief. But you can attempt to clarify any points that might have been unclear in your brief or so complicated that they might be difficult to understand. As in the briefs, your oral argument should refer back to legal authority for justification. Be as clear and to the point as possible. During your remarks one or more of the justices may ask you questions. If so, stop what you are saying and answer the question. If you do not know the answer to the question, just say so.

Refer to the justices as "Justice [Last Name]" if you feel comfortable identifying them by name, or simply as "Your honor" if that seems easier. Be respectful to the justices; do not raise your voice, pound on the lectern, or use inappropriate language. Being respectful of the Court can only help your case.

After all the briefs have been filed and oral argument, if requested, has been held, the case is "submitted." If you do not request oral argument, your case will be

submitted at the same time as the cases that were argued on the same oral argument calendar. After the case is submitted, the court does not accept any further information about the case. (CRC rule 8.256(d).) The justices on the panel discuss the case, and decide what they think is the correct disposition. A decision is then filed within 90 days after the end of the month in which the case is submitted.

Sample Form C

PROOF OF SERVICE BY MAIL INSTRUCTIONS FOR SUPERIOR COURT OR COURT OF APPEAL

Each document you prepare must be served on all counsel and self-represented parties in your case. The document must be served by mail or hand-delivered by someone who is over the age of 18, not a party to the appeal, and a resident of the county where the mailing or delivery occurred.

This sample form is for service by mail, which is the easiest and most common method of service. If you wish to have the document delivered in person instead of mailed, you may adapt this sample form by replacing line 3 with language indicating the name of the person(s) to whom the document was delivered, the date and time of delivery, and the address where the delivery occurred. (For sample language for a hand-delivery, see page 4, line 3b of [Sample Form F](#).)

All documents must be served on all attorneys of record and any self-represented parties. **If the document is a brief, you must also serve one copy on the Superior Court and five copies on the California Supreme Court. If the document is a brief or petition, you must serve one copy on any public officer or agency required to be served by CRC rule 8.29.**

How to serve a document:

Make a copy of your document for each person or entity you must serve and enough copies for filing with the Court of Appeal. The person doing the mailing must complete the Proof of Service and attach an unsigned copy to each copy of the document being served. The person doing the service should mail a copy of the document to each person listed in the Proof of Service by depositing it in the United States mail with postage fully prepaid. The envelopes may be deposited in a United States post office or mailbox. The original document cannot be filed with the court until service has been completed by mailing the copies. After the envelopes have been deposited into the mail, the original Proof of Service should be signed and attached to the original document for filing.

Filling out the Proof of Service form:

Fill out the case name, Court of Appeal case number, and Superior Court case number. If you are filing the document in the Superior Court, use the Superior Court case name. If you are filing in the Court of Appeal, use the Court of Appeal case name.

Fill out the name of the non-party over the age of 18 who will be doing the mailing.

On line 2, specify the residential or business address of the person doing the mailing, and check the appropriate line for residence or business.

On line 3, specify the date of the mailing, the name of the document being served (for example, "Appellant's Opening Brief"), and the place where the mailing took place. List the full names and addresses of all the parties or their attorneys to whom the documents are being mailed. If the

Sample Form C

document is a brief, you must also serve the Superior Court, the California Supreme Court (5 copies). If the document is a brief or petition, you must serve any public officer or agency who must be served under CRC rule 8.29. These addresses must also be listed on the Proof of Service.

Date the Proof of Service, type or print the name of the person doing the mailing, and include the signature of the person doing the mailing.

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties.

Sample Form C

PROOF OF SERVICE BY MAIL

CASE NAME: _____
COURT OF APPEAL CASE NUMBER: _____
SUPERIOR COURT CASE NUMBER: _____

I, _____ (*specify name of person doing service*), declare as follows:

1. At the time of service, I was at least 18 years of age and not a party to this legal action. I am a resident or employed in the county where the within-mentioned service occurred.

2. My residence or business address is (*specify*):

_____ residence _____ business

3. On _____ (*specify date*), I served the _____ (*specify document*) by United States mail as follows: I enclosed a copy in separate envelopes, with postage fully prepaid, addressed to each individual addressee named below, and I deposited each sealed envelope with the United States Postal Service in _____, California, for delivery as follows:

(*List addresses and send 1 copy to each party*)

California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(*5 copies of briefs only*)

_____ Superior Court

(*List address of Superior Court and serve 1 copy of briefs only*)

(*List address of any public officer or agency required to be served by CRC rule 8.29 and serve 1 copy of briefs only.*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(*TYPE OR PRINT NAME*)

(*SIGNATURE OF DECLARANT*)

Sample Form F

NOTICE DESIGNATING RECORD ON APPEAL - INSTRUCTIONS

After filing your notice of appeal you have 10 days to tell the Superior Court what you want in the record that will be sent to the Court of Appeal; this is called the Notice Designating Record on Appeal. On the next few pages is a form to assist you in designating the record. What you choose to include in your record depends on the issues you wish to raise on appeal. This notice is filed in the Superior Court.

The Notice Designating Record on Appeal is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>. Select "Appellate" forms, then click on Form APP-003.

Filling out the Notice Designating Record on Appeal:

Caption

- (1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- (2) In the "Superior Court of California, County of" area of the form, specify the county, address, and branch name of the superior court that made the order or judgment you are appealing.
- (3) In the next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the superior court case caption.
- (4) In the "Superior Court Case Number" box to the right, write the superior court case number.
- (5) In the "RE: Appeal filed on (*date*)" box, write the date the Notice of Appeal was filed.
- (6) In the "Court of Appeal Case Number (*if known*)" box immediately to the right, write the Court of Appeal case number, if you have it.
- (7) Specify the name of the county after the entry "TO: Clerk of the Superior Court of California County of (*name of county*)"
- (8) After the line marked "NOTICE IS HEREBY GIVEN", check the appropriate box to indicate whether you are the appellant (the appealing party) or respondent (the responding party).

Page 1, Entries 1-4

Check only one of the four boxes in entries 1-4.

Sample Form F

Check box "1" if you plan to prepare your own transcript (appendix) under California Rules of Court, rule 8.124 instead of having the Superior Court prepare a clerk's transcript and you don't want a reporter's transcript. If you check this box, there is no need to fill out pages two or three. Date and sign the bottom of this form and you are done.

Check box "2" if you plan to prepare your own transcript (appendix) under California Rules of Court, rule 8.124 instead of having the Superior Court prepare a clerk's transcript and you also want a reporter's transcript. If you check this box be sure to fill out the reporter's transcript section on page three; you do not have to fill out page two.

Check box "3" if you want the Superior Court to prepare a clerk's transcript but you don't want a reporter's transcript. If you check this box be sure to fill out the clerk's transcript section on page two; you do not have to fill out page three.

Check box "4" if you want the Superior Court to prepare both the clerk's transcript and the reporter's transcript. If you check this box be sure to fill out the clerk's transcript section on page two and the reporter's transcript section on page three.

At the bottom of page 1, write the current date on the form, type or print your name legibly, and sign the form.

Page Two (Notice Designating Clerk's Transcript):

Fill out this page only if you checked box "3" or "4" on page one; if you checked box "1" or "2" you do not need to fill out this page. The first seven documents are filled in for you. You may designate anything that was in the Superior Court file as part of your record on appeal, choosing as few or as many documents as you wish. What you choose to include in your record depends on the issues you wish to raise on appeal. You will need to make a \$100.00 deposit with the Superior Court if you select this option.

Page Three (Notice Designating Reporter's Transcript):

Fill out this page only if you checked box "2" or "4" on page one; if you checked box "1" or "3" you do not need to fill out this page. A reporter's transcript is a word for word typewritten record of everything that was said in court during a trial or hearing. For each day you want transcribed, write the reporter's name, the department of the Superior Court you were in, the date and the nature of the proceeding. The reporter's transcript costs money. You can ask the reporter to give you an estimate of what it will cost in advance or you can pay \$650 per day for days where there were more than three hours to be transcribed or \$350 per day where there were less than three hours to be transcribed.

Sample Form F

Page Four (Proof of Service)

Have someone over the age of 18 who is not a party to the action serve the Notice Designating Record on Appeal and fill out the Proof of Service on page 4 of the form. See instructions accompanying [Sample Form C](#).

Due: 10 days after filing Notice of Appeal

File: Original with Superior Court
(Bring an extra copy to be file-stamped for your file.)

Serve: Court Reporter (if reporter's transcript requested)
All counsel
All self-represented parties

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

NOTICE IS HEREBY GIVEN that *(name)*:

The ☐ Appellant ☐ Respondent in the above case elects to proceed with the following record on appeal:

(check only one)

1. ☐ (Appendix Only; no Reporter's Transcript)
 - a. elects under rule 8.124 of the California Rules of Court to prepare own transcript in lieu of a court-prepared clerk's transcript.
AND
 - b. elects to have no reporter's transcript. *(Date and sign only.)*
2. ☐ (Appendix and Reporter's Transcript)
 - a. elects under rule 8.124 of the California Rules of Court to prepare own transcript in lieu of a court-prepared clerk's transcript.
AND
 - b. elects a reporter's transcript as designated on page 3. *(Fill out the reporter's transcript section on page 3.)*
3. ☐ (Clerk's Transcript Only; no Reporter's Transcript)
 - a. elects under rule 8.120 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2.)*
AND
 - b. elects to have no reporter's transcript.
4. ☐ (Clerk's and Reporter's Transcripts)
 - a. elects under rule 8.120 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2*
AND
 - b. elects a reporter's transcript as designated on page 3. *(Fill out the reporter's transcript section on page 3.)*

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:	CASE NUMBER:
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NOTICE DESIGNATING CLERK'S TRANSCRIPT

(Cal. Rules of Court, rule 8.120)

- A. It is requested that the following documents in the superior court file be included in the clerk's transcript (*give the specific title of each document, an accurate description, and the date of filing*):

Document Title and DescriptionDate of Filing

(NOTE: Items 1–7 are required to be a part of the clerk's transcript and will automatically be included.)

1. Notice of appeal
2. Notice designating record on appeal (*this document*)
3. Judgment or order appealed from
4. Notice of entry of judgment (*if any*)
5. Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (*if any*)
6. Ruling on item 5
7. Register of actions (*if any*)
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.

- B. It is requested that the following EXHIBITS admitted into evidence or marked for identification be copied into clerk's transcript on appeal (*check only one box*):

1. ☐ All Exhibits
2. ☐ Specific Exhibits (*give the exhibit number [for example, Plaintiff's #1, Defendant's B, Respondent's A], a brief description, and admission status.*):

☐ See additional pages.

CASE NAME:

CASE NUMBER:

NOTICE DESIGNATING REPORTER'S TRANSCRIPT
(Cal. Rules of Court, rule 8.130)

Reporter's NameDept.DateNature of Proceedings

1.

2.

3.

4.

5.

6.

7.

8.

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16.

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18.

19.

☐

See additional pages.

CASE NAME:	CASE NUMBER:
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NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

☐ Mail ☐ Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence or business address is (*specify*):
3. I mailed or personally delivered a copy of the *Notice Designating Record on Appeal (Unlimited Civil Case)* as follows (*complete either a or b*):
 - a. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope **and**
 - (a) ☐ **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. ☐ **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)